IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.501 of 2001

Subramanian @ Subban .. Appellant

-Vs-

State rep. by:
The Inspector of Police
Poolampatti Police Station
Salem District
Cr.No.233 of 1999 .. Respondent

This criminal appeal is preferred under Sec.374(2) of The Code of Criminal Procedure against the judgment of the III Additional Sessions Judge, Salem, made in S.C.No.339 of 1999 and dated 7.11.2000.

!For Appellant : Mr. S.N.Thangaraj

^For Respondent : Mr.O.Srinath
Government Advocate (Crl. Side)

:JUDGMENT

The sole accused in a case of murder who stood charged and tried under Ss 302 and 324 of the Indian Penal Code, has brought forth this appeal, challenging the conviction under Ss 304(i) and 324 of I.P.C. and sentence of 10 years R.I. and fine of Rs.3,000/- in default, 6 months R.I. under Sec.304(i) of IPC and 1 year R.I. and fine of Rs.2,000/- in default, 3 months R.I. under Sec.324 of IPC.

2. The short facts necessary for the disposal of the appeal can be stated thus:

(a) The appellant/accused and the deceased Madesh were close relatives and also residing in the adjacent houses in Molaparai Perumal Nagar, Poolampatti Village, Edapadi Taluk. P.W.1 Palaniammal is the wife of the deceased, while P.W.2 Lakshmi is the mother-in-law. There was a long standing enmity between the parties over a common passage which was situate in between the houses. On the date of incident namely 24.3.1999 at about 11.00 A.M., the deceased Madesh was returning to his house, after taking batch in the Cauvery River. Near the house of one Rajamani, the wife of the accused namely Rajammal scolded the deceased in sarcastic language. Hence, the deceased pushed her down. On seeing this, the appellant/accused came to the place of occurrence with M.O.1 billhook, attacked the deceased on the left side neck

and caused his instantaneous death. When P.W.1, the wife of the deceased, intervened, she was also attacked on both hands by the appellant, and simple injuries were caused to her. The said incident was witnessed by P.W.3 Pushpamary and P.W.4 Raju. P.W.1 accompanied by P.W.4 rushed to Poolampatti Police Station and gave a complaint under Ex.P1 . On the strength of Ex.P1, P.W.11 Duraisamy, Head Constable, registered a case at 1.30 P.M. in Crime No.233/99 under Ss 302 and 324 of IPC. Ex.P14 printed F.I.R. was despatched to the concerned Judicial Magistrate's Court, while the copies of the same were sent to the higher officials. P.W.1 was sent to the Government Hospital, Edapadi with the medical memo. P.W.7 Dr.Kothandaraman examined P.W.1 at about 6 .00 P.M. and issued Ex.P6 accident register.

(b) P.W.12 Karunakaran, Inspector of Police, on receipt of the copy of the F.I.R. took up the investigation, proceeded to the occurrence place, made an inspection and prepared Ex.P2 observation mahazar in the presence of P.W.5 Seerangan, Village Administrative Officer and other witness and Ex.P15 rough sketch. Then, P.W.12 conducted the inquest on the dead body of Madesh in front of the panchayatars and witnesses and prepared Ex.P16 inquest report. He examined P.Ws.2 and 3 and other witnesses and recorded their statements. He made a request under Ex.P7 to P.W.8 Dr.Sundararajan through P.W.9 Shanmugam, Constable for conducting the postmortem. Accordingly, P.W.8 Doctor conducted the autopsy on the dead body of Madesh on 25.3.99 at 8.30 A.M. and issued Ex.P8 postmortem certificate, wherein he has narrated the injuries as follows.

External Injuries:

1. A lacerated wound on the right forearm 6 cm x 3 cm muscle deep.
2. A cut injury on the left forearm, semicircle in shape with reversion of the skin exposing the muscles and bone.
3. A cut injury on the left side of the neck 12 cm x 5 cm, deep upto the cervical vertebra C6 exposing the spinal cord which is lacerated. All the major neck blood vessels on the left side have been cut.

The Doctor has opined that the deceased would appear to have died of shock and haemorrhage and injury to cervical spinal card and to major neck blood vessels on the left side.

(c) P.W.12 Investigating Officer recovered M.O.2 bloodstained lungi, M.O.3 bloodstained earth and M.O.7 sample earth under Ex.P3 mahazar in front of P.W.5 V.A.O. and other witness. At about 7.15 P.M., P.W.12 arrested the accused and recorded the co sional statement made by him voluntarily. The admissible portion of the confessional statement is marked as Ex.P4. Pursuant to the confession, M.O.1 billhook was recovered under Ex.P5 mahazar in front of P.W.5 V.A.O. and other witness. P.W.12 recorded their statements. The appellant/accused was sent for judicial custody. On 25.3.99, P.W.12 proceeded to the Government Hospital, Edapadi and examined P.Ws.1, 4, 6, 9 and 11 and recorded their statements. P.W.8 Doctor was also examined, and his statement was recorded. P.W.12 produced all the material objects before the concerned Magistrate's Court and made a request for sending them for chemical analysis. Accordingly they were sent. On completion of the analysis, the chemical analyst's reports and the serologist's report were received, which were marked as Exs.P11 to P13 respectively through P.W.10 Dhandapani, Head Clerk, attached to the Court of the Judicial Magistrate No.II, Sangagiri. On completion of the investigation, a charge sheet was filed against the appellant/accused under Ss 302 and 324 of I.P.C.

3. In order to prove the charges levelled against the appellant/ accused, the prosecution examined 12 witnesses and marked 16 exhibits and 7 material objects. After the completion of the evidence of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. in respect of the incriminating circumstances found in the evidence of the prosecution witnesses, which were denied by him as false. The wife of the appellant/accused was examined as D.W.1. She has stated that at the time of occurrence, she was not only pushed down, but the deceased attempted to outrage her modesty and under such circumstances, they went over to the Police Station and lodged a complaint, but it was not enquired into, and instead a false case has been foisted against the accused. On consideration of the rival submissions made and scrutiny of the materials available, the trial Court found the accused guilty under Ss 304(i) and 324 of I.P.C. and has awarded the punishment as referred to above. Hence this appeal by the aggrieved appellant/accused.

4. Arguing for the appellant/accused, the learned Counsel would submit that the lower Court without proper consideration of the evidence, has convicted the accused; that it is pertinent to note that there are vital contradictions in the evidence of P.Ws.1 and 2; that they are interested witnesses; that a perusal of the accident register would show that two persons committed the alleged offence, but the appellant alone has been arrayed as accused; that the lower Court has not considered the defence put forth by the accused; that it has to be noted that before lodging the complaint under Ex.P1, the accused and his wife have lodged a complaint against the deceased for the acts done by him; that the complaint given by the accused and his wife has been totally suppressed by the prosecution, since it was against the prosecution case; that this aspect of the matter would clearly show that the case was totally cooked-up; that there is undue delay in lodging the F.I.R, which would create a doubt on the entire prosecution case; that the medical evidence has not corroborated the prosecution case, and hence, the judgment of the lower Court has got to be set aside and the appellant/accused be acquitted of the charges against him.

5. Countering to the above contentions of the appellant's side, the learned Government Advocate (Criminal Side) would argue that the lower Court has thoroughly analysed the entire evidence and has come to the conclusion that the accused was guilty of the charges against him; that because of the fact that P.Ws.1 and 2 are relatives, their evidence cannot be rejected, since their evidence is cogent and acceptable; that there is no delay in lodging the F.I.R.; that the medical evidence has fully corroborated the ocular evidence; that the lower Court has correct found the appellant/accused guilty under Ss 304(i) and 324 of I.P.C., and there is nothing to interfere in the judgment of the lower Court, and hence, the judgment of the lower Court has got to be sustained.

6. A careful consideration of the rival submissions and thorough appraisement of the available materials would lead to the irresistible conclusion that there is no substance in this appeal.

7. The gist of the prosecution case was that on 24.3.99 at about 11.00 A.M., when the deceased Madesh, the husband of P.W.1 was returning to his house after taking bath in Cauvery River, and when he was crossing the house of one Rajamani, D.W.1 Rajammal, the wife of the accused abused him, and hence he pushed her down, and seeing this, the accused armed with M.O.1.

billhook attacked him on both hands and left side neck of the deceased and caused instantaneous death. At the outset it has got to be pointed out that at the time of Sec.313 Cr.P.C. questioning, the appellant/accused has categorically admitted that it was he who attacked the deceased with the weapon and caused his death. The incident has been clearly spoken to not only by P.W.1, the injured witness, who came to the rescue of the husband at the time of attack by the accused and who also sustained injuries, but also by the other witnesses, who were present namely P.Ws.3 and 4. It is true that the witnesses examined on the side of the prosecution namely P. Ws.1 and 2 are close relatives. But, the Court cannot reject their testimonies solely on that ground. It has to exercise careful scrutiny over them. The evidence of those witnesses, if scrutinised carefully, inspires the confidence of the Court, because it is cogent and acceptable. That apart, as pointed out already, the presence of the accused at the time and place of occurrence and the attack on the deceased by a weapon are well admitted by him at the time of questioning under Sec.313 of Cr.P.C. It is pertinent to point out that D.W.1, the wife of the accused has also admitted the same.

8. What was contended by the defence before the Court below and equally here also was that at the time of occurrence, the deceased Madesh not only pushed D.W.1 down, but attempted to outrage her modesty by pulling her saree and jacket; that enraged over the same and due to sudden provocation, the accused acted in such a manner thereby causing injuries; that by way of self defence, he is entitled to do so, and hence, the defence put forth by him has to be accepted. This theory of self defence was rejected by the lower Court and rightly too. The wife of the accused, examined as D.W.1 has categorically admitted in her cross examination that it was for the first time she placed the whole story before the trial Court. Hence, the contention of the appellant's side that immediately after the occurrence, the appellant/ accused and D.W.1 had gone to the Police Station and gave a complaint, but it was not considered and no enquiry was made has got to be rejected. 9. At the time of investigation, the Investigating Officer conducted the inquest on the dead body of Madesh, prepared an inquest report and sent the dead body for autopsy. P.W.8 Doctor attached to the Government Hospital, Edapadi conducted autopsy on the dead body of Madesh. The Doctor has narrated the injuries found and has opined that the death would have been caused due to shock and haemorrhage and injury to cervical spinal card and to major neck blood vessels on the left side. This part of the medical evidence stands a good piece of corroboration to the ocular testimony through P.W.1 and other witnesses. The evidence as to the chemical analysis reports and the recovery of M.O.1 pursuant to the confessional statement made by the accused voluntarily had been placed in the hands of the trial Court. Thus, the evidence as narrated above would be suffice to find the accused guilty that it was he who caused the instantaneous death of the said Madesh by attacking him with M.O.1 weapon of murder at the time and place of occurrence. At the time of occurrence, when P.W.1 intervened to save her husband, she was also attacked by the appellant, and the accused caused simple injuries to her. She was also examined medically and certificate has also been brought forth, wherein injuries have been narrated, and thus, the charge under Sec.324 of I.P.C. has also been proved.

10. Under the stated circumstances, the lower Court was perfectly correct in recording a conviction not under Sec.302 of I.P.C., but under

Sec.304(i) of I.P.C. in view of the fact that at the time of occurrence, there was a huge quarrel, and following the same. the accused has acted in such a manner, and further at the time of occurrence, it should have been well within the knowledge of the accused that the assault on the neck of the deceased with M.O.1 deadly weapon would cause instantaneous death. The lower Court is also right in finding the appellant/accused guilty under Sec.324 of I.P.C. There is nothing to interfere in the conviction passed by the lower Court.

11. Coming to the question of sentence, the lower Court has awarded 10 years R.I. to the appellant/accused under Sec.304(i) of I.P.C. along with fine. Taking into consideration the facts and circumstances of the case, the Court is of the considered view that the reduction of the sentence from 10 years R.I. to 7 years R.I. would meet the ends of justice. In other respects, the sentences awarded by the lower Court has got to be confirmed.

12. In the result, the sentence of 10 years R.I. imposed by the lower Court on the appellant/accused under Sec.304(i) of I.P.C. alone is modified, and the appellant/accused shall undergo 7 years R.I. under Sec.304(i) I.P.C. In other respects, the judgment of the lower Court is confirmed. With the above modification, this criminal appeal is dismissed.

Index: Yes
Internet: Yes

To:

1) The Judicial Magistrate No.I, Sangagiri.
2) The Judicial Magistrate No.I, Sangagiri,
Thro' The Chief Judicial Magistrate, Salem.
3) The III Additional Sessions Judge, Salem.
4) The III Additional Sessions Judge, Salem,
Thro' The Principal Sessions Judge, Salem.
5) The Superintendent, Central Prison, Coimbatore.
6) The Public Prosecutor, High Court, Madras.
7) The D.I.G. of Police, Chennai 4.
8) Mr.O.Srinath, Government Advocate (Crl. Side),
High Court, Madras.
9) The Inspector of Police, Poolampatti Police Station,
Salem.
10)The Inspector of Police, Coimbatore Race Course
Police Station.

nsv/

□